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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/810,815	03/16/2001	Andreas Burgard	00/067 NUT	6739

7590

01/20/2004

ProPat LLC
CROSBY ROAD
Charlotte, NC 28211

EXAMINER

WALLS, DIONNE A

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 01/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/810,815

Applicant(s)

BURGARD ET AL.

Examiner

Dionne A. Walls

Art Unit

1731

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

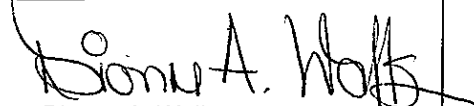
Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1,3,4,10 and 11.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See Continuation Sheet


Dionne A. Walls
Primary Examiner
Art Unit: 1731

Continuation of 5. does NOT place the application in condition for allowance because: the Examiner is NOT convinced that one having ordinary skill in the art would NOT have arrived at the claimed compound having a nicotine:sweetener molar ratio of 1:2. Applicant asserts that it has provided unexpected results for a 1:2 molar ratio because the Table, on page 11 of the instant specification, indicates that compounds having the 1:2 nicotine:sweetener molar ratio had no nicotine taste after 5 minutes, whereas compounds having the 1:1 nicotine:sweetener molar ratio had nicotine taste after 10 seconds. However, the Examiner does not believe that this result is unexpected. Obviously, one having ordinary skill in the art would know that if more sweetener is added, in solution with nicotine, the resulting compound will provide for better masking of the nicotine taste since the very function of a sweetener is to SWEETEN, i.e. enhance the flavor. The Applicant has not provided evidence showing WHY the addition of an extra molecule of sweetener would NOT have been an obvious improvement of the compound taught in the combined references. It seems that the unexpected result that Applicant teaches in his disclosure really has to do with the discovery that a COMPOUND of nicotine and sweetener is better at masking the nicotine taste than a MIXTURE of the same (see page 11, lines 12-15), rather than the notion that a 1:2 molar ratio of the nicotine and sweetener molecule provides better taste than a 1:1 molar ratio. The Examiner still believes that the combined references are still proper for rejecting the pending claims.

Continuation of 10. Other: The Final Rejection, mailed on September 15, 2003, is maintained..